

13 MAR 2006

#9



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Young & Thompson  
745 South 23<sup>rd</sup> Street  
Arlington, VA 22202

In re Application of :  
GRIFFNER :  
Application No.: 10/534,467 :  
PCT No.: PCT/AT03/00314 :  
Int. Filing Date: 16 October 2003 :  
Priority Date: 11 November 2002 :  
Attorney Docket No.: 4301-1138 :  
For: BUILDING MADE OF WALL HALLOW :  
HEATED ELEMENTS :

COMMUNICATION

This communication is in response to the applicant's "Response to Notification of Defective Response" filed 21 February 2006 in the United States Patent and Trademark Office (USPTO).

**BACKGROUND**

On 16 October 2003, applicant filed international application PCT/AT03/00314, which claimed priority of an earlier application filed 11 November 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 27 May 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 11 May 2005.

On 11 May 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an Information Disclosure Statement and an Application Data Sheet.

On 24 October 2005, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. In addition, applicant was informed of the need to provide an English translation of the international application. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 22 December 2005, applicant responded with an English translation of the

international application and a combined declaration and power of attorney executed by the sole inventor. The international application number on the filed declaration was listed as PCT/AT2003/000315.

On 23 January 2006, applicant was mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that the filed declaration was defective as it identified the wrong PCT application. Applicant was afforded one month from the mailing of the Form PCT/DO/EO/916 or the amount of extendable time from the mail date of the Form PCT/DO/EO/905 to file a proper reply.

On 21 February 2006, applicant filed the present response arguing that the papers filed on 22 December 2005 provided sufficient information for the declaration to comply with 37 CFR 1.63.

### DISCUSSION

Applicant concedes that the declaration filed 22 December 2005 contained a typographical error in the PCT number. Notwithstanding that error, applicant argues that the document complies with the identification requirement of 37 CFR 1.63(b)(1). Specifically, applicant cites Section 602 of the Manual of Patent Examining Procedure (MPEP) as support in the contention that the declaration contained the title of the invention which was on the specification, the declaration was accompanied by a cover letter accurately identifying the application serial number and filing date and the declaration contained the attorney docket number which appeared on the originally filed transmittal letter. However, Section 602 does not apply to the current situation. Section 602 provides a combination of information which is considered as acceptable minimums for identifying the specification. In the present case, although incorrect, a specification was identified. The additional information described in applicant's present response merely added to the confusion as to applicant's intentions.

Section 602 further states that:

Any variance from the above guidelines will only be considered upon the filing of a petition for waiver of the rules under 37 CFR 1.183 accompanied by a petition fee ( 37 CFR 1.17(f)).

Further an oath or declaration attached to a cover letter referencing an incorrect application may not become associated with the correct application and, therefore, could result in the abandonment of the correct application.

Thus, it is clear that Section 602 is not meant to provide an avenue for relief where the filed declaration lists an incorrect application number and the accompanying documents contain conflicting information as to the actual specification identified.

**CONCLUSION**

Applicant is advised that a compliant oath or declaration of the inventor in response to the "Notification of Missing Requirements" (Form PCT/DO/EO/905) mailed 24 October 2005 has not been filed and that the extendable time period for responding continues to run. Failure to timely provide a compliant oath or declaration of the inventor will result in the application becoming abandoned as to the National stage in the United States.



Derek A. Putonen  
Attorney Advisor  
Office of PCT Legal Administration  
Tel: (571) 272-3294  
Fax: (571) 273-0459